

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed December 15, 2004. Upon entry of the amendments in this response, claims 1 – 29 and 31 – 64 remain pending. In particular, Applicants amend claims 1 and 39, and cancel claim 30 without prejudice, waiver, or disclaimer. Applicants cancel claim 30 merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicants reserve the right to pursue the subject matter of these canceled claims in a continuing application, if Applicants so choose, and do not intend to dedicate the canceled subject matter to the public. Reconsideration and allowance of the application and presently pending claims are respectfully requested. In addition, Applicants do not intend to make any admissions regarding any other statements in the Office Action that are not explicitly referenced in this response.

I. Rejections Under 35 U.S.C. §102

A proper rejection of a claim under 35 U.S.C. §102 requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983).

A. Claims 1 is Patentable Over Pandya

The Office Action indicates that claim 1 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. patent number 6,671,724 to Pandya (“*Pandya*”). In response, Applicants amend claim 1 to further distinguish the patentable features of claim 1. More specifically, applicants add the verbiage “forecasting downstream network access usage by each user during a

future time interval based on said monitored network access usage by each user..." (claim 1, as amended). Applicants submit that *Pandya* fails to disclose, teach, or suggest at least this limitation. The Office Action recites that

Pandya et al. further discloses forecasting network access usage by each user during a future time interval based on the monitored network access usage by each user (See column 15 line 46 to column 16 line 56 and Figure 11A – D of Pandya et al for reference to forecasting the future bandwidth CB for a user that is the 'fair share' of available bandwidth for the user for the upcoming cycle or time period) – (OA p. 3, beginning at line 10).

Applicants respectfully disagree with this analysis. As recited in *Pandya*, "To summarize the three parameters, UB is the amount the networked device is used in the prior cycle, AB is the maximum amount they were allowed to use, and CB specifies the device's 'fair share' of available bandwidth for the upcoming cycle" (col. 15, lines 54 – 58). As clearly illustrated in this passage, "fair share" is not the same as "forecasting downstream network access usage by each user during a future time interval based on said monitored network access usage by each user." For at least this reason, Applicants respectfully submit that claim 1, as amended is patentable over *Pandya*.

B. Claim 39 is Patentable Over Pandya

The Office Action indicates that claim 39 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. patent number 6,671,724 to Pandya ("*Pandya*"). Applicants respectfully traverse this rejection on the grounds that the *Pandya* reference does not disclose, teach, or suggest "forecasting upstream and downstream network access usage by each user

“during a future time interval based on said monitored network access usage by each user,” as recited in claim 39. More specifically, the Office Action recites that

Pandya et al. further discloses forecasting network access usage by each user during a future time interval based on the monitored network access usage by each user (See column 15 line 46 to column 16 line 56 and Figure 11A – D of Pandya et al for reference to forecasting the future bandwidth CB for a user that is the ‘fair share’ of available bandwidth for the user for the upcoming cycle or time period) – (OA p. 3, beginning at line 10).

Applicants respectfully disagree with this analysis. As recited in *Pandya*, “To summarize the three parameters, UB is the amount the networked device is used in the prior cycle, AB is the maximum amount they were allowed to use, and CB specifies the device’s ‘fair share’ of available bandwidth for the upcoming cycle” (col. 15, lines 54 – 58). As clearly illustrated in this passage, “fair share” is not the same as “forecasting upstream and downstream network access usage by each user during a future time interval based on said monitored network access usage by each user.” For at least this reason, Applicants respectfully submit that claim 39 is patentable over *Pandya*.

C. Claims 2 – 4, 6, 8 – 11, 13, 15 – 25 and 33 - 37 are Patentable Over Pandya

In addition, dependent claims 2 – 4, 6, 8 – 11, 13, 15 – 25 and 33 – 37 are believed to be allowable for at least the reason that these claims depend from allowable independent claim 1. Further, dependent claims 40, 42 – 54, 57 – 59 and 61 - 62 are believed to be allowable for at least the reason that they depend from allowable independent claim 39. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

V. Rejections Under 35 U.S.C. §103

In order for a claim to be properly rejected under 35 U.S.C. §103, the teachings of the prior art reference must suggest all features of the claimed invention to one of ordinary skill in the art.

See, e.g., In re Dow Chemical, 837 F.2d 469, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); In re Keller, 642 F.2d 413, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981). Further, “[t]he PTO has the burden under section 103 to establish a *prima facie* case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” *In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).*

A. Claim 63 is Patentable Over Pandya in View of Barnes

The Office Action indicates that claims 63 stands rejected under 35 U.S.C. 103(a) as being unpatentable over *Pandya* and further in view of U.S. patent number 6,529,486 to *Barnes* (“*Barnes*”). Applicants respectfully traverse this rejection on the grounds that the *Pandya* reference does not disclose, teach, or suggest “based on said monitoring, forecasting the number of logical data units (LDUs) of each user that will be transmitted over a future time interval,” as recited in claim 63. More specifically, the Office Action recites that

Pandya et al. further discloses based on the monitoring, forecasting the number of logical data units of each user that will be transmitted over a future time interval (See column 15 line 46 to column 16 line 56 and Figure 11A – D of Pandya et al for reference to forecasting the future bandwidth CB for a user that is the ‘fair share’ of available bandwidth for the user for the upcoming cycle or time period) – (OA p. 13, beginning at line 9).

Applicants respectfully disagree with this analysis. As recited in *Pandya*, “To summarize the three parameters, UB is the amount the networked device is used in the prior cycle, AB is the maximum amount they were allowed to use, and CB specifies the device’s ‘fair share’ of available bandwidth for the upcoming cycle” (col. 15, lines 54 – 58). As clearly illustrated in this passage, “fair share” is not the same as “based on said monitoring, forecasting the number of logical data units (LDUs) of each user that will be transmitted over a future time interval.” For at least this reason, Applicants respectfully submit that claim 63 is patentable over *Pandya*.

B. Claim 64 is Patentable Over Pandya in View of Barnes

The Office Action indicates that claims 64 stands rejected under 35 U.S.C. 103(a) as being unpatentable over *Pandya* and further in view of U.S. patent number 6,529,486 to *Barnes* (“*Barnes*”). Applicants respectfully traverse this rejection on the grounds that the *Pandya* reference does not disclose, teach, or suggest “based on said monitoring, forecasting the number of logical data units (LDUs) that will be requested by each user over a future time interval,” as recited in claim 64. More specifically, the Office Action recites that

Pandya et al. further discloses based on the monitoring, forecasting the number of logical data units of each user that will be transmitted over a future time interval (See column 15 line 46 to column 16 line 56 and Figure 11A – D of Pandya et al for reference to forecasting the future bandwidth CB for a user that is the ‘fair share’ of available bandwidth for the user for the upcoming cycle or time period) – (OA p. 14, beginning at line 7).

Applicants respectfully disagree with this analysis. As recited in *Pandya*, “To summarize the three parameters, UB is the amount the networked device is used in the prior cycle, AB is the maximum amount they were allowed to use, and CB specifies the device’s ‘fair share’ of

available bandwidth for the upcoming cycle” (col. 15, lines 54 – 58). As clearly illustrated in this passage, “fair share” is not the same as “based on said monitoring, forecasting the number of logical data units (LDUs) that will be requested by each user over a future time interval.” For at least this reason, Applicants respectfully submit that claim 64 is patentable over *Pandya*.

C. Claims 5 and 7 are Patentable Over Pandya in view of Barnes

The Office Action indicates that claims 5 and 7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Pandya* and further in view of U.S. patent number 6,529,486 to Barnes (“*Barnes*”). Applicants submit that dependent claims 5 and 7 are allowable for at least the reason that these claims depend from allowable independent claim 1. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

D. Claims 12, 28 and 60 are Patentable Over Pandya in view of Hanko

The Office Action indicates that claims 12, 28 and 60 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Pandya* and further in view of U.S. patent number 6,438,141 to Hanko (“*Hanko*”). Applicants submit that dependent claims 12 and 28 are allowable for at least the reason that these claims depend from allowable independent claim 1. Further, dependent claim 60 is believed to be allowable for at least the reason that it depends from allowable independent claim 39. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

E. Claim 14 is Patentable Over Pandya in view of Farah

The Office Action indicates that claim 14 stands rejected under 35 U.S.C. 103(a) as being unpatentable over *Pandya* and further in view of U.S. patent number 6,567,418 to *Farah* (“*Farah*”). Applicants submit that dependent claim 14 is allowable for at least the reason that this claim depends from allowable independent claim 1. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

F. Claim 26 and 55 are Patentable Over Pandya in view of Gemar

The Office Action further indicates that claims 26 and 55 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Pandya* and further in view of U.S. patent number 6,483,839 to *Gemar* (“*Gemar*”). Applicants submit that dependent claim 26 is allowable for at least the reason that this claim depends from allowable independent claim 1. Further, dependent claim 55 is believed to be allowable for at least the reason that it depends from allowable independent claim 39. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

G. Claims 27 and 56 are Patentable Over Pandya in view of Hou

The Office Action further indicates that claims 27 and 56 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Pandya* and further in view of U.S. patent number 6,324,184 to *Hou* (“*Hou*”). Applicants submit that dependent claim 27 is believed to be allowable for at least the reason that this claim depends from allowable independent claim 1. Further, dependent claim 57 is believed to be allowable for at least the reason that it depends from allowable independent claim 39. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

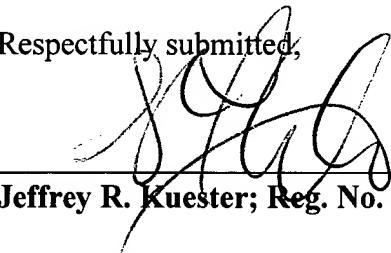
H. Claims 32 and 41 are Patentable Over Pandya in view of Huang

The Office Action further indicates that claims 32 and 41 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Pandya* and further in view of U.S. patent number 6,151,852 to Huang (“*Huang*”). Applicants submit that dependent claim 32 is believed to be allowable for at least the reason that this claim depends from allowable independent claim 1. Further, dependent claim 41 is believed to be allowable for at least the reason that it depends from allowable independent claim 39. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

CONCLUSION

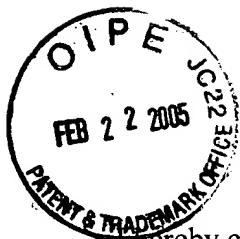
In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1 – 29 and 31 - 64 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



Jeffrey R. Kuester; Reg. No. 34,367

**THOMAS, KAYDEN,
HORSTEMEYER & RISLEY, L.L.P.**
Suite 1750
100 Galleria Parkway N.W.
Atlanta, Georgia 30339
(770) 933-9500



CERTIFICATE OF MAILING

I hereby certify that the below listed items are being deposited with the U.S. Postal Service as first class mail in an envelope addressed to:

**Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450**

on 2-17-05.

A handwritten signature in black ink, appearing to read "J. R. Kuester".

Jeffrey R. Kuester

In Re Application of:

McKinnon, et al.

Confirmation No.: 5106

Serial No.: 09/800,717

Group Art Unit: 2665

Filed: March 7, 2001

Examiner: Mattis, Jason E.

Docket No.: A-8973 (191930-1340)

For: Monitoring and Allocating Access Across a Shared Communications Medium

The following is a list of documents enclosed:

Return Postcard
Amendment Transmittal Page
Response

Further, the Commissioner is authorized to charge Deposit Account No. 20-0778 for any additional fees required. The Commissioner is requested to credit any excess fee paid to Deposit Account No. 20-0778.